

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Securities and Exchange Commission

**DEFENDANTS**

Scott B. Gann and George B. Fasciano

JAN 10 2005

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

305 CV

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**(b) County of Residence of First**

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Johnson

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**(c) Attorney's (Firm Name, Address, and Telephone Number)**

J. Kevin Edmundson  
Securities and Exchange Commission, Fort Worth District Office, 801 Cherry  
Street, 19<sup>th</sup> Floor, Fort Worth, Texas 76102, (817) 978-1411

**Attorneys (If Known)**

Cheryl Jerome Moore, Patton Boggs, LLP, 2001 Ross Avenue, Suite 3000,  
Dallas, Texas 75201, 214.758.1500

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- X 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | X 1                        | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- X 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.  
Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. § 78u(d)(1), 78u(d)(3), 78u, 78aa, 78j(b) and § 78o(c)(1). Defendants violated the anti-fraud provisions of the federal securities laws.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

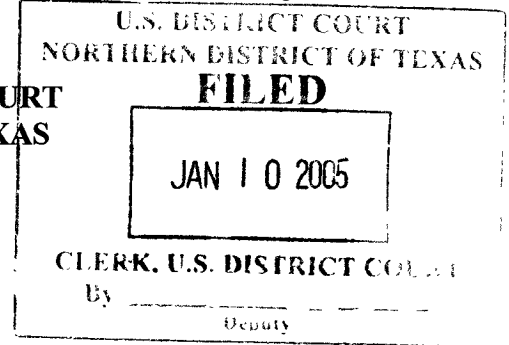
DOCKET NUMBER

DATE 1/10/2005 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION, )

Plaintiff, )

v. )

SCOTT B. GANN and )  
GEORGE B. FASCIANO )

Defendants. )

COMPLAINT

**305 CV 063 L**

Plaintiff Securities and Exchange Commission alleges the following:

**SUMMARY**

1. From at least February 2003 until September 2003, Scott B. Gann and George B. Fasciano, former stockbrokers at Southwest Securities, Inc., participated in a scheme to defraud hundreds of mutual funds and their shareholders by engaging in deceptive market timing practices on behalf of a single client, a hedge fund adviser based in New York ("Hedge Fund").

2. Knowing that mutual fund companies monitor activity in their family of mutual funds and restrict excessive trading, Defendants engaged in a fraudulent scheme to disguise their market timing trading, and thereby circumvented trading restrictions imposed by the fund companies. Specifically, Defendants routinely and systematically (i) concealed their own identities and the identity of the Hedge Fund, (ii) created multiple accounts for the Hedge Fund and used several broker identification numbers to process market timing trades, (iii) divided trades into amounts designed to evade detection, and (iv) used different branch identification numbers to disguise their trading activity. Using these fraudulent tactics, Defendants placed

thousands of market timing trades for Hedge Fund that would have otherwise been rejected by the fund companies.

3. As a result, Defendants caused harm to mutual fund companies and their shareholders by diluting the value of the mutual fund shares and increasing the transaction costs associated with the management of the mutual funds. Defendant received approximately \$112,871 in ill-gotten gains deriving from the conduct alleged herein.

4. Through the activities alleged in this Complaint, Defendants violated and aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The Commission seeks: (i) entry of a permanent injunction prohibiting Defendants from further violations of the relevant provisions and rules of the Exchange Act; (ii) disgorgement of ill-gotten gains, plus prejudgment interest; and (iii) the imposition of third-tier civil penalties against each Defendant due to the recurrent and egregious nature of their violations.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Venue is proper in this district because many of the acts and transactions alleged in this Complaint occurred in this district and Defendants reside in this district.

6. The Commission seeks a permanent injunction and disgorgement of ill-gotten gains pursuant to Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)]. The Commission seeks the imposition of civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

7. In connection with the conduct described in this Complaint, Defendants directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

### **DEFENDANTS**

8. Scott B. Gann, age 39, was a Senior Vice President and registered representative in Southwest's Private Client Group from December 2001 to April 2004, when Southwest terminated his employment. Gann resides in Parker, Texas.

9. George B. Fasciano, age 34, was a Vice President and registered representative in Southwest's Private Client Group from November 2000 to April 2004, when Southwest terminated his employment. Fasciano resides in Dallas, Texas.

### **THE FRAUDULENT SCHEME**

#### ***Background***

10. Market timing refers to the practice of short-term buying and selling of mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can adversely affect mutual fund shareholders because profits that a market timer takes can dilute the value of shares held by long-term shareholders. In addition, the frequent in and out trading associated with market timing activity disrupts portfolio management, increases trading costs (which all shareholders bear), and may cause the fund to realize capital gains at inopportune times.

11. Fund companies routinely monitor the trading activity within their family of funds. Fund companies send block notices to brokers whom the companies suspect to be engaged in market timing. Block notices refer to communications from mutual fund companies, complaining about market timing. Block notices typically include a statement of the mutual

funds' aversion to market timing and a notification of restrictions on market timing trading, including the prohibition of future trades in specific blocked accounts, the prohibition of trades by a particular broker, or the prohibition of future trades bearing a particular branch office identification number.

12. During the relevant period, Southwest employed Defendants as brokers in its Dallas branch office. Among other things, Defendants assisted clients in brokerage transactions, including the purchase and sale of mutual funds.

13. Southwest maintained dealer agreements with various fund companies, which, along with the fund prospectus and statement of additional information, set forth the terms and conditions regarding the purchase and sale of mutual funds. Fund companies typically prohibit market timing, or impose strict limitations on the frequency of trades in order to limit market timing.

14. Defendants were aware that mutual fund companies deemed market timing to be improper and unacceptable.

15. In or around November 2002, representatives of the Hedge Fund contacted Defendants and expressed an interest in opening accounts at Southwest for the express purpose of executing market timing trades. Hedge Fund told Defendants that it was interested in finding brokers that had market timing "capacity" (*i.e.*, the ability to place market timing trades).

16. In November 2002, Hedge Fund responded to a written questionnaire from Defendants that asked: "What strategies have you enacted to avoid being shut down [by the mutual funds] in the future?" Hedge Fund responded: "Having more than one number with a [registered representative]. Rotating accounts and more than one [registered representative]"

number with multiple accounts.” Defendants received a copy of Hedge Fund’s response to the questionnaire.

17. In January 2003, Defendants began opening trading accounts for Hedge Fund. On February 10, 2003, Hedge Fund placed its first trade through Defendants. Fifteen days later, Southwest received a block notice from SEI Funds relating to Hedge Fund’s market timing trading. Defendants were aware of this block notice.

18. By September 2003, Defendants had executed approximately 2,000 market timing trades for Hedge Fund in at least 56 mutual fund families (165 total mutual funds) with an aggregate value of at least \$650 million.

19. At least 34 mutual fund families, representing hundreds of mutual funds, detected Defendants’ market timing activities and sent block notices to Southwest between February 2003 and September 2003, as reflected below:

Date of Block Notice	Investment Company	Blocked Accounts
4/9/2003	AIM	801015393 261422072
6/6/2003	AIM	277316943
7/28/2003	AIM	247181629
7/29/2003	AIM	339542560
8/6/2003	AIM	247175695 523967365
8/8/2003	AIM	523975234 801024335
8/28/2003	AIM	339543893 339548299
3/4/2003	American Century	339542560
9/11/2003	Blackrock Funds	
4/8/2003	CDC Nvest Funds	

Date of Block Notice	Investment Company	Blocked Accounts
6/23/2003	CDC Nvest Funds	
6/23/2003	CDC Nvest Funds	
6/27/2003	CDC Nvest Funds	
3/26/2003	Columbia Funds	801024335
3/17/2003	Delaware Invest	
6/23/2003	Delaware Invest	
3/4/2003	Dodge & Cox	277316943
7/2/2003	Dodge & Cox	339543893
7/28/2003	Dodge & Cox	339542560 339548299
7/11/2003	Dreyfus	
8/27/2003	Eaton Vance	
8/27/2003	Evergreen	
5/14/2003	Federated	277316943
6/5/2003	Federated	339542560 801024335 801015393
7/14/2003	Federated	339438481 277316891
10/10/2003	Federated	247175695 523975234
3/27/2003	Fidelity	277316943 339448238
7/21/2003	Fifth Third Funds	216422072 801015393 801024335
4/15/2003	Franklin	801024335
3/18/2003	Gabelli Funds	277316943 339448238
4/21/2003	Goldman Sachs	

Date of Block Notice	Investment Company	Blocked Accounts
6/20/2003	Harbor Funds	801024335
4/15/2003	Hartford	
4/16/2003	ING	
3/5/2003	Janus	277316943 216422072
5/21/2003	Loomis Sayles	277316943
2/27/2003	Lord Abbett	
4/3/2003	Lord Abbett	801024335
4/29/2003	Lord Abbett	339458187 339448238 277316943
5/23/2003	Managers Funds	
7/28/2003	Managers Funds	339438481 339448238 277316943
6/20/2003	Navellier	
6/3/2003	PIMCO	216422072 80105393 801024335
3/17/2003	Prudential	801024335
7/11/2003	Scudder	277316943 339542560
8/27/2003	Scudder	277316891 339458187 277316891
2/25/2003	SEI	524056473
4/8/2003	SEI	216422072
6/5/2003	SEI	339548299 339458187
6/25/2003	SEI	339548299 339458187
7/12/2003	SEI	277316891



Date of Block Notice	Investment Company	Blocked Accounts
9/11/2003	SEI	277316943
7/28/2003	SIT Funds	339438481 339448238
3/24/2003	SunAmerica Funds	216422072
8/27/2003	SunAmerica Funds	
3/11/2003	T. Rowe Price	339542560 277316943
3/24/2003	T. Rowe Price	216422072
3/26/2003	T. Rowe Price	801024335
4/9/2003	T. Rowe Price	801015393
5/6/2003	T. Rowe Price	339448238 339458187
6/3/2003	T. Rowe Price	339548299 339543893
7/11/2003	T. Rowe Price	524072473
9/9/2003	TCW Galileo	339542560
3/5/2003	UBS	770125433
3/6/2003	Wells Fargo	339542560
6/27/2003	Wells Fargo	523975234 247175695
7/3/2003	Wells Fargo	339438481 339543893
8/8/2003	Wells Fargo	524072473 277316943

20. Gann and Fasciano were aware of these block notices. In fact, Defendants kept records tracking the mutual funds that restricted or prohibited Hedge Fund or Defendants from trading in those funds' shares. Defendants routinely shared these records, or the actual block notices, with Hedge Fund in an effort to coordinate the fraudulent scheme.

21. Southwest received a “wrap fee” of 1.75% of the money it managed for Hedge Fund. Southwest earned \$257,349 in fees from the Hedge Fund market timing accounts, of which Defendants received approximately \$112,871.

***Defendants’ Fraudulent Use of Multiple Accounts***

22. On January 23, 2003, Defendants opened five accounts for five different Hedge Fund-affiliated entities. By May 6, 2003, Defendants had opened 21 Hedge Fund accounts for nine different Hedge Fund affiliates, as reflected below:

Account No.	Hedge Fund Affiliate Name	Representative Name	Date Opened
216437104	Hedge Fund A	Fasciano	1/23/2003
216420720	Hedge Fund A	Gann/Fasciano	3/24/2003
216422072	Hedge Fund A	Gann	3/24/2003
247181629	Hedge Fund B	Gann	4/30/2003
247175695	Hedge Fund B	George Fasciano	5/6/2003
277316943	Hedge Fund C	Gann	1/23/2003
277316891	Hedge Fund C	Fasciano	1/31/2003
339543893	Hedge Fund D	Fasciano	1/23/2003
339542560	Hedge Fund D	Gann	3/24/2003
339548299	Hedge Fund D	Gann/Fasciano	3/24/2003
339458187	Hedge Fund E	Gann	1/23/2003
339438481	Hedge Fund E	Gann/Fasciano	1/31/2003
339448238	Hedge Fund E	George Fasciano	1/31/2003
462453136	Hedge Fund F	Gann	4/30/2003
462457735	Hedge Fund F	Fasciano	5/6/2003
523967365	Hedge Fund G	Gann	4/30/2003
523975234	Hedge Fund G	Fasciano	5/6/2003
524072262	Hedge Fund H	Gann	4/30/2003
524072473	Hedge Fund H	Fasciano	5/6/2003
801024335	Hedge Fund I	Gann	1/23/2003
801015393	Hedge Fund I	Fasciano	2/2/2003

23. Defendants used these Hedge Fund accounts and affiliated entities for the sole purpose of enabling Hedge Fund to conceal its identity, and thereby avoid detection by the mutual funds or gain access to mutual funds that had previously restricted Hedge Fund's market timing trading.

24. For example, on April 21, 2003, Southwest received a block notice from Goldman Sachs Funds, barring trading in Hedge Fund Account No. 801015393. Defendants, however, placed numerous subsequent trades in Goldman Sachs Funds, using ten different Hedge Fund account numbers, as reflected below:

Trade Date	Account	Representative Name	Transaction Type	Shares	Price
4/28/2003	277316943	Gann	Initial Purchase	34439.83	\$12.05
5/19/2003	277316943	Gann	Partial Liquidation	(34429.00)	\$12.47
9/8/2003	277316943	Gann	Full Liquidation	(10.83)	\$14.22
7/1/2003	277316943	Gann	Subsequent Purchase	33538.94	\$12.97
7/10/2003	277316943	Gann	Full Liquidation	(33549.74)	\$13.18
6/4/2003	339448238	Fasciano	Initial Purchase	32071.10	\$12.94
6/19/2003	339448238	Fasciano	Full Liquidation	(32071.10)	\$13.43
5/22/2003	339458187	Gann	Initial Purchase	21929.83	\$12.54
6/2/2003	339458187	Gann	Partial Liquidation	(21919.00)	\$13.10
6/4/2003	339458187	Gann	Subsequent Purchase	21742.42	\$13.20
6/19/2003	339458187	Gann	Partial Liquidation	(21743.00)	\$13.70
6/26/2003	339458187	Gann	Subsequent Purchase	22183.99	\$13.37
7/10/2003	339458187	Gann	Partial Liquidation	(22184.00)	\$13.46
9/8/2003	339458187	Gann	Full Liquidation	(10.24)	\$14.22
5/22/2003	339542560	Gann	Subsequent Purchase	31499.20	\$12.54
6/2/2003	339542560	Gann	Partial Liquidation	(31499.00)	\$13.10
6/4/2003	339542560	Gann	Subsequent Purchase	34696.97	\$13.20
6/19/2003	339542560	Gann	Partial Liquidation	(34697.00)	\$13.70
9/8/2003	339542560	Gann	Full Liquidation	(10.55)	\$14.22
6/26/2003	339543893	Fasciano	Initial Purchase	35138.37	\$13.37
7/10/2003	339543893	Fasciano	Partial Liquidation	(35128.00)	\$13.46
9/8/2003	339543893	Fasciano	Full Liquidation	(10.37)	\$14.22

Trade Date	Account	Representative Name	Transaction Type	Shares	Price
5/27/2003	339548299	Gann/Fasciano	Initial Purchase	11462.45	\$12.65
6/2/2003	339548299	Gann/Fasciano	Partial Liquidation	(11452.00)	\$13.10
6/4/2003	339548299	Gann/Fasciano	Subsequent Purchase	12878.79	\$13.20
6/19/2003	339548299	Gann/Fasciano	Partial Liquidation	(12879.00)	\$13.70
6/26/2003	339548299	Gann/Fasciano	Subsequent Purchase	34988.78	\$13.37
7/10/2003	339548299	Gann/Fasciano	Partial Liquidation	(34989.00)	\$13.46
9/8/2003	339548299	Gann/Fasciano	Full Liquidation	(10.02)	\$14.22

25. Defendants received additional block notices from Goldman Sachs Funds on June 13, 2003 (Account No. 339448238) and July 9, 2003 (Account No. 277316943).

26. On June 6, 2003, Southwest received a block notice from AIM Funds, barring future trades in Hedge Fund Account No. 277316943. Defendants, however, executed several additional trades in AIM Funds, between June 19, 2003 and September 8, 2003, using Hedge Fund account numbers that AIM Funds had not yet restricted, as reflected below:

Trade Date	Account	Representative Name	Transaction Type	Shares	Price
7/1/2003	277316891	Fasciano	Exchange – Buy	27005.70	\$5.26
7/10/2003	277316891	Fasciano	Partial Liquidation	(27005.00)	\$5.44
9/8/2003	277316891	Fasciano	Full Liquidation	(10.80)	\$5.99
6/19/2003	277316891	Fasciano	Exchange – Buy	30408.47	\$9.53
7/1/2003	277316891	Fasciano	Exchange – Sell	(15398.00)	\$9.47
7/1/2003	277316891	Fasciano	Exchange – Sell	(15000.00)	\$9.47
9/8/2003	277316891	Fasciano	Full Liquidation	(59.72)	\$9.16
9/2/2003	277316891	Fasciano	Initial Purchase	31689.14	\$14.09
9/8/2003	277316891	Fasciano	Full Liquidation	(31689.14)	\$14.35
7/1/2003	277316891	Fasciano	Exchange – Buy	15017.41	\$9.71
7/10/2003	277316891	Fasciano	Partial Liquidation	(15007.00)	\$10.03
9/8/2003	277316891	Fasciano	Full Liquidation	(10.41)	\$11.32

27. On June 20, 2003, Southwest received a block notice from Harbor Funds, barring future trades in Hedge Fund Account No. 801024335. Defendants, however, executed several

subsequent trades in Harbor Funds, using accounts 277316943 and 339458187, as reflected below:

Trade Date	Account	Representative Name	Transaction Type	Shares	Price
6/26/2003	277316943	Gann	Initial Purchase	12069.67	\$29.28
7/10/2003	277316943	Gann	Partial Liquidation	(12059.00)	\$30.29
7/25/2003	277316943	Gann	Subsequent Purchase	15836.31	\$30.79
7/31/2003	277316943	Gann	Partial Liquidation	(15836.00)	\$30.72
9/5/2003	277316943	Gann	Full Liquidation	(10.98)	\$32.89
6/26/2003	277316943	Gann	Initial Purchase	32855.01	\$6.69
7/10/2003	277316943	Gann	Partial Liquidation	(32845.00)	\$6.86
7/25/2003	277316943	Gann	Subsequent Purchase	54008.56	\$7.01
7/31/2003	277316943	Gann	Partial Liquidation	(54008.00)	\$6.94
9/5/2003	277316943	Gann	Full Liquidation	(10.57)	\$7.40
7/25/2003	339458187	Gann	Initial Purchase	49301.00	\$7.01
7/31/2003	339458187	Gann	Partial Liquidation	(49290.00)	\$6.94
8/5/2003	339458187	Gann	Full Liquidation	(11.00)	\$6.90

28. On July 29, 2003, Southwest received a block notice from AIM Funds, barring all future trades in Hedge Fund Account No. 339542560. Defendants, however, executed several trades in AIM funds, using Hedge Fund accounts that AIM had not yet restricted, as reflected below:

Trade Date	Account	Representative Name	Transaction Type	Shares	Price
8/4/2003	339543893	Fasciano	Subsequent Purchase	3215.05	\$13.69
8/22/2003	339543893	Fasciano	Exchange – Sell	(32625.28)	\$13.95
8/4/2003	339543893	Fasciano	Subsequent Purchase	47524.37	\$10.26
8/22/2003	339543893	Fasciano	Exchange – Sell	(47534.42)	\$10.92
8/26/2003	339543893	Fasciano	Exchange – Buy	46175.93	\$10.80
9/5/2003	339543893	Fasciano	Partial Liquidation	(46175.93)	\$11.27

Trade Date	Account	Representative Name	Transaction Type	Shares	Price
8/18/2003	339548299	Fasciano	Initial Purchase	28582.73	\$13.90
8/22/2003	339548299	Fasciano	Exchange – Sell	(28582.73)	\$13.85
8/26/2003	339548299	Fasciano	Exchange – Buy	21754.90	\$13.79
9/8/2003	339548299	Fasciano	Full Liquidation	(21754.90)	\$14.32
8/18/2003	339548299	Fasciano	Initial Purchase	22088.22	\$17.91
8/22/2003	339548299	Fasciano	Exchange – Sell	(22088.22)	\$17.70
8/26/2003	339548299	Fasciano	Exchange – Buy	17182.13	\$17.46
9/8/2003	339548299	Fasciano	Full Liquidation	(17182.13)	\$18.25
8/4/2003	339548299	Fasciano	Initial Purchase	8115.41	\$13.69
8/22/2003	339548299	Fasciano	Exchange – Sell	(8115.41)	\$13.95
8/26/2003	339548299	Fasciano	Exchange – Buy	21739.13	\$13.80
9/8/2003	339548299	Fasciano	Full Liquidation	(21739.13)	\$14.35

***Defendants' Fraudulent Use of Registered Representative Numbers***

29. During the relevant period, Defendants used multiple registered representative numbers to hide their identities from the mutual fund companies and, thereby, gain access to mutual funds that had previously blocked trading in one of their registered representative numbers. In setting up the Hedge Fund accounts, Defendants used three registered representative numbers (one for Gann, one for Fasciano and a joint registered representative number) and they used all three to make trades for Hedge Fund.

30. For example, on April 8, 2003, CDC Nvest Funds blocked Gann's registered representative number (C276) from executing future trades because of market timing activity. Defendants, however, executed several subsequent trades in CDC Nvest funds for Hedge Fund using Fasciano's registered representative number (D014), as reflected below:

Trade Date	Account	Representative Name	Transaction Type	Shares	Price
6/19/2003	247175695	Fasciano	Exchange - BUY	24489.09	\$11.80
6/27/2003	247175695	Fasciano	Full Liquidation	(24489.09)	\$11.70
6/4/2003	247175695	Fasciano	Initial Purchase	25811.81	\$10.84
6/19/2003	247175695	Fasciano	Exchange - SELL	(25801.00)	\$11.20
9/8/2003	247175695	Fasciano	Full Liquidation	(10.81)	\$11.78
6/19/2003	523975234	Fasciano	Exchange - BUY	23438.37	\$11.80
6/26/2003	523975234	Fasciano	Full Liquidation	(23438.37)	\$11.71
6/4/2003	523975234	Fasciano	Initial Purchase	24704.80	\$10.84
6/19/2003	523975234	Fasciano	Exchange - SELL	(24694.00)	\$11.20
7/10/2003	523975234	Fasciano	Full Liquidation	(10.80)	\$11.04
6/11/2003	524072473	Fasciano	Initial Purchase	22245.27	\$11.09
6/19/2003	524072473	Fasciano	Partial Liquidation	(22235.00)	\$11.20
8/29/2003	524072473	Fasciano	Full Liquidation	(10.27)	\$11.37

31. On April 15, 2003, the Hartford Funds blocked Gann's registered representative number (C276) from executing future trades because of market timing activity. Defendants, however, executed several additional trades in the Hartford Funds from June 1 to August 26, 2003 with Fasciano's registered representative number (D014) and the shared registered representative number (C881), as reflected below:

Trade Date	Rep Name	Rep Number	Account	Transaction Type	Shares	Price
6/11/2003	Fasciano	D014	247175695	Initial Purchase	31053.86	\$12.81
6/19/2003	Fasciano	D014	247175695	Exchange - SELL	(31043.00)	\$12.88
6/26/2003	Fasciano	D014	247175695	Exchange - BUY	31195.28	\$12.69
7/10/2003	Fasciano	D014	247175695	Exchange - SELL	(31196.00)	\$12.95
9/8/2003	Fasciano	D014	247175695	Full Liquidation	(10.14)	\$13.67
6/19/2003	Fasciano	D014	247175695	Exchange - BUY	34919.99	\$11.45
6/26/2003	Fasciano	D014	247175695	Exchange - SELL	(34909.00)	\$11.34
7/10/2003	Fasciano	D014	247175695	Exchange - BUY	35719.56	\$11.31
7/14/2003	Fasciano	D014	247175695	Partial Liquidation	(35720.00)	\$11.30
9/8/2003	Fasciano	D014	247175695	Full Liquidation	(10.54)	\$11.07
6/26/2003	Fasciano	D014	339448238	Initial Purchase	31804.57	\$12.69
7/10/2003	Fasciano	D014	339448238	Partial Liquidation	(31794.00)	\$12.95
6/26/2003	Fasciano	D014	339448238	Initial Purchase	52878.97	\$8.51
7/10/2003	Fasciano	D014	339448238	Partial Liquidation	(52868.00)	\$8.66
9/8/2003	Fasciano	D014	339448238	Full Liquidation	(10.97)	\$9.38
7/25/2003	Fasciano	D014	339543893	Initial Purchase	36318.60	\$13.12
7/31/2003	Fasciano	D014	339543893	Partial Liquidation	(36308.00)	\$12.94
9/8/2003	Fasciano	D014	339543893	Full Liquidation	(10.60)	\$13.67
7/25/2003	Gann/Fasciano	C881	339548299	Initial Purchase	37164.63	\$13.12
7/31/2003	Gann/Fasciano	C881	339548299	Partial Liquidation	(37154.00)	\$12.94
8/26/2003	Gann/Fasciano	C881	339548299	Subsequent Purchase	35110.94	\$13.07
9/5/2003	Gann/Fasciano	C881	339548299	Partial Liquidation	(35121.58)	\$13.52
7/25/2003	Gann/Fasciano	C881	339548299	Initial Purchase	50168.54	\$8.90
7/31/2003	Gann/Fasciano	C881	339548299	Partial Liquidation	(50158.00)	\$8.73
9/8/2003	Gann/Fasciano	C881	339548299	Full Liquidation	(10.54)	\$9.38
6/11/2003	Fasciano	D014	523975234	Initial Purchase	30281.03	\$12.81
6/19/2003	Fasciano	D014	523975234	Exchange - SELL	(30271.00)	\$12.88
6/26/2003	Fasciano	D014	523975234	Exchange - BUY	30419.62	\$12.69
7/10/2003	Fasciano	D014	523975234	Exchange - SELL	(30419.00)	\$12.95
9/8/2003	Fasciano	D014	523975234	Full Liquidation	(10.65)	\$13.67
6/19/2003	Fasciano	D014	523975234	Exchange - BUY	34051.57	\$11.45
6/26/2003	Fasciano	D014	523975234	Exchange - SELL	(34041.00)	\$11.34
7/10/2003	Fasciano	D014	523975234	Exchange - BUY	34829.89	\$11.31
7/14/2003	Fasciano	D014	523975234	Partial Liquidation	(34830.00)	\$11.30
9/8/2003	Fasciano	D014	523975234	Full Liquidation	(10.46)	\$11.07
6/11/2003	Fasciano	D014	524072473	Initial Purchase	22474.63	\$12.81
6/19/2003	Fasciano	D014	524072473	Partial Liquidation	(22464.00)	\$12.88
9/8/2003	Fasciano	D014	524072473	Full Liquidation	(10.63)	\$13.67
6/11/2003	Fasciano	D014	524072473	Initial Purchase	20666.67	\$8.70
6/19/2003	Fasciano	D014	524072473	Partial Liquidation	(20656.00)	\$8.78
9/8/2003	Fasciano	D014	524072473	Full Liquidation	(10.67)	\$9.38
4/23/2003	Fasciano	D014	801015393	Initial Purchase	33075.54	\$11.12
4/29/2003	Fasciano	D014	801015393	Full Liquidation	(33075.54)	\$11.14



32. On April 16, 2003, the ING Funds blocked Gann's registered representative number (C276) from executing future trades because of market timing activity. Defendants, however, executed several subsequent ING Funds trades for Hedge Fund, using Fasciano's registered representative number (D014), as reflected below:

Trade Date	Rep Name	Account	Transaction Type	Shares	Price
4/28/2003	Fasciano	339448238	Subsequent Purchase	39855.07	\$12.42
5/19/2003	Fasciano	339448238	Partial Liquidation	(39855.00)	\$12.83
8/29/2003	Fasciano	339448238	Full Liquidation	(10.31)	\$16.02
4/28/2003	Fasciano	339448238	Subsequent Purchase	64529.22	\$12.32
5/19/2003	Fasciano	339448238	Partial Liquidation	(64529.00)	\$12.50
8/29/2003	Fasciano	339448238	Full Liquidation	(10.64)	\$14.09
5/19/2003	Fasciano	801015393	Exchange - BUY	26324.38	\$11.09
5/22/2003	Fasciano	801015393	Exchange - SELL	(26332.00)	\$11.13
9/8/2003	Fasciano	801015393	Full Liquidation	(0.71)	\$10.74
5/9/2003	Fasciano	801015393	Subsequent Purchase	14871.66	\$19.48
5/19/2003	Fasciano	801015393	Exchange - SELL	(14872.00)	\$19.63
5/22/2003	Fasciano	801015393	Exchange - BUY	14861.82	\$19.72
7/10/2003	Fasciano	801015393	Full Liquidation	(14871.99)	\$21.12

33. Defendants did not earn commissions on Hedge Fund's trades because the Hedge Fund account was a "fee-based" account, from which Defendants received a percentage of the assets under management. There was no legitimate purpose for Defendants' use of multiple registered representative numbers in effecting Hedge Fund's trades.

***Defendants' Scheme to Disguise Hedge Fund's Identity by  
Dividing Trades Into Smaller Dollar Amounts***

34. During the relevant period, Defendants used the multiple Hedge Fund accounts, held by multiple Hedge Fund-affiliated entities, to divide trades into dollar amounts designed to evade the detection of the mutual funds. By dividing Hedge Fund's trades among multiple accounts and Hedge Fund-affiliated entities, Defendants reduced the average size of Hedge

Fund's trades in an effort to avoid detection by the fund companies. There was no legitimate purpose for Defendants to structure the trades in this manner.

35. On March 20, 2003, Fasciano sent an e-mail to Hedge Fund and Gann memorializing this aspect of their fraudulent scheme. In pertinent part, Fasciano's email states "[u]nder \$500,000 will go under the radar. \$500,000 will get checked and reviewed [by the mutual fund]."

36. For example, on June 26, 2003, Defendants executed purchases worth over \$2.55 million in the Wells Fargo International Equity Fund, using several Hedge Fund accounts held by three Hedge Fund affiliates. Defendants placed several orders, ranging from approximately \$387,000 to \$491,000, as reflected below:

Trade Date	Account	Rep Name	Transaction Type	Shares	Price
6/26/2003	339543893	Fasciano	Initial Purchase	52513.37	\$9.35
6/26/2003	339543893	Fasciano	Initial Purchase	53081.08	\$9.25
6/26/2003	247175695	Fasciano	Exchange - BUY	42995.68	\$9.25
6/26/2003	247175695	Fasciano	Exchange - BUY	42535.83	\$9.35
6/26/2003	523975234	Fasciano	Exchange - BUY	41477.67	\$9.35
6/26/2003	523975234	Fasciano	Exchange - BUY	41926.08	\$9.25

37. On July 25, 2003, Defendants executed purchases with an aggregate value of over \$2.54 million in the Blackrock US Opportunities Fund, using several Hedge Fund accounts held by six Hedge Fund-affiliated entities. Defendants placed several orders in amounts ranging from approximately \$250,000 to \$446,000, as reflected below:

Trade Date	Account	Rep Name	Transaction Type	Shares	Price
7/25/2003	216422072	Gann	Initial Purchase	17274.47	\$15.63
7/25/2003	801015393	Fasciano	Initial Purchase	18873.96	\$15.63
7/25/2003	247181629	Gann	Initial Purchase	17594.37	\$15.63
7/25/2003	247175695	Fasciano	Initial Purchase	15994.88	\$15.63
7/25/2003	523975234	Fasciano	Initial Purchase	15994.88	\$15.63
7/25/2003	339458187	Gann	Initial Purchase	20850.93	\$15.63
7/25/2003	277316891	Fasciano	Initial Purchase	28566.86	\$15.63
7/25/2003	277316943	Gann	Initial Purchase	27722.33	\$15.63

38. On July 25, 2003, Defendants executed purchases worth over \$1.4 million in the AIM European Growth Fund, using five Hedge Fund accounts held by three Hedge Fund-related entities. Defendants divided the trades into amounts ranging from approximately \$211,000 to \$387,000, as reflected below:

Trade Date	Account	Rep Name	Transaction Type	Shares	Price
7/25/2003	523967365	Gann	Subsequent Purchase	15303.28	\$17.97
7/25/2003	523975234	Fasciano	Subsequent Purchase	16416.25	\$17.97
7/25/2003	339542560	Gann	Exchange - BUY	11761.13	\$17.97
7/25/2003	339542560	Gann	Subsequent Purchase	15019.48	\$17.97
7/25/2003	524072473	Fasciano	Initial Purchase	21569.28	\$17.97

***Defendants' Fraudulent Use of a New Office Identification Number***

39. By February 26, 2003, Southwest had received at least six block notices from mutual funds relating to the Hedge Fund accounts.

40. On that day, Fasciano requested the creation of a new office identification number to disassociate Defendants' market timing business from another market timing broker at Southwest. Fasciano requested a new office identification number to prevent Hedge Fund's trading from "bumping into the reputation of the office."

41. Fasciano complained that various mutual funds had restricted Hedge Fund's trades due to this brokers' market timing reputation. Specifically, he said that "[t]hree funds found us and canceled our trades solely by [their] search of the office codes . . . [t]he office rep and [the other market timing broker's identification] number."

42. Upon receipt of the new branch office identification number from their supervisors, Defendants used the new branch office identification number as part of their scheme to circumvent trading restrictions that the mutual funds imposed on Southwest due to the other broker's timing activities.

### ***Defendants' Misrepresentations***

43. In placing market timing orders for Hedge Fund as alleged above, Defendants concealed their identities and the identity of Hedge Fund.

44. After receiving block notices from the fund companies, Defendants misrepresented their identities and the identity of Hedge Fund in subsequent transactions placed with the mutual funds that sent block notices.

45. Defendants' misrepresentations were material. The fund companies would not have processed the orders submitted by Defendants on behalf of Hedge Fund had Defendants disclosed their identity and the identity of the Hedge Fund.

### **FIRST CLAIM**

#### **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)**

46. Plaintiff repeats and realleges paragraphs 1 through 45 above.

47. Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, by the use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the

statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons.

48. As a result, Defendants, knowingly or recklessly violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

49. Further, Defendants knowingly or recklessly provided substantial assistance to, and thus aided and abetted, the uncharged violations of Section 10(b) of the Exchange Act and Rule 10b-5 committed by their clients in connection with the fraudulent market timing transactions alleged above.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

##### **I.**

Enter a permanent injunction restraining Defendants and their respective agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in violations of, or aiding and abetting violations of Sections 10(b) of the Exchange Act [15 U.S.C. § 78j(b) and § 78o(c)(1)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

##### **II.**

Order Defendants to disgorge their ill-gotten gains, plus pre-judgment interest.

##### **III.**

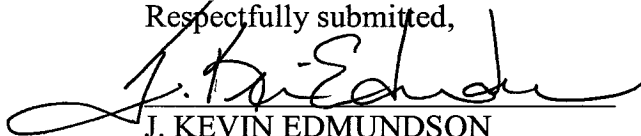
Order each Defendant to pay an appropriate civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

IV.

Award such other and further relief as the Court deems just and proper.

January 10, 2005

Respectfully submitted,



J. KEVIN EDMUNDSON

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